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MICHAEL RODAK, JR., CLERK

IN THE

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

NO. 72-6830

ROBERT V. PACE
*Petitioner,*

v.

LEVIN H. CAMPBELL, ET ALS
*Respondents*

## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Submitted by:

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IN THE

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ROBERT V. PACE

Petitioner

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---

## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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TO THE HONORABLE, THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Petitioner, Robert V. Pace, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the First Circuit entered in the case of Robert V. Pace, Appellant v Levin H. Campbell et als, Appellees, No. 73-1001, in that Court on February 28, 1973.

## OPINION BELOW

The February 28, 1973, opinion of the United States Court of Appeals for the First Circuit, dismissing the petitioner's appeal as frivilous, is included in the Appendix on page A-1.

## JURISDICTION

The Court's jurisdiction is invoked under 28 U. S. Code, Section 1254(1) and (2), entitled, "Court of Appeals: certiorari; appeal;..."

## QUESTIONS PRESENTED

The questions presented by this petition for writ of certiorari to the United States Court of Appeals for the First Circuit include:

1. The denial to the petitioner of due process in an action commenced in the United States District Court for the District of Massachusetts, wherein four judges of the State Court of the Commonwealth of Massachusetts were named defendants in an action involving a Federal Question based upon the petitioner's allegation that the judges violated Federal Law and deprived the petitioner of his constitutionally-guaranteed rights.

2. The denial to the petitioner of due process by the United States District Court, when the dismissal of the petitioner's action in the Federal Court resulted in not overturning the State action, which the petitioner claims was an action pursued without authority and in contravention of Federal Law.

3. The denial to the petitioner of due process by means of a fair trial on a Federal Question, when the United States District Court dismissed

the petitioner's action, and said dismissal was affirmed, without hearing, by the Circuit Court of Appeals.

## STATUTORY PROVISIONS INVOLVED

United States Code, Title 28, Sections 1446 (a) and (e), as follows:

> "Section 1446. Procedure for Removal
>
> (a) A defendant or defendants desiring to remove any civil action or criminal prosecution from a State court shall file in the district court of the United States for the district and division within which such action is pending a verified petition containing a short and plain statement of the facts which entitle him or them to removal together with a copy of all process, pleadings and orders served upon him or them in such action.
>
> (e) Promptly after the filing of such petition and bond the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the petition with the clerk of such State court, which shall effect the removal and the State court shall proceed no further unless and until the case is remanded.

In the original complaint filed in the United States District Court, the petitioner claimed

jurisdiction under 28, U. S. Code, Section 1[illegible], which reads as follows:

"Section 1445. Civil rights cases

Any of the following civil actions or criminal prosecutions, commenced in a State court may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending:

(1) Against any person who is denied or cannot enforce in the court of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof;

(2) For any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law.

## STATEMENT OF THE CASE

On November 22, 1971, the petitioner, Robert V. Pace, brought an action in the United States District Court for the District of Massachusetts, Civil Action No. 71-2684-M, naming as defendants four judges from the Superior Court of Middlesex County, as well as others, all of whom the petitioner alleged had acted in concert

and/or had contributed to deprive the petitioner of his civil rights, and Federally-protected rights, by violating Federal Law in contravention of U. S. Code Title 28, Section 1446(e)

Civil Action No. 71-2684-M, dated November 22, 1971, was dismissed on December 19, 1972, not have been tried on its merits, with a claim by the judge of the United States District Court that the petitioner lacked sufficient facts with which to support his claims.

The petitioner appealed the dismissal mentioned above on December 23, 1972, and said appeal was dismissed as being frivilous by the United States Court of Appeals for the First Circuit on February 28, 1973, without a hearing.

## REASONS FOR GRANTING THE WRIT

Petitioner bases his petition on the following grounds:

(1) Rule 19(b) of this Court provides for consideration of an important question of Federal Law which has not been, but should be, settled by this

Court; and for consideration of the departure of a lower court from the accepted and usual concept of judicial decency and fair play.

(2) When the petitioner removed the State case in which he was defendant to the Federal District Court, according to Federal Statute U. S. Code Title 28, Section 1446(e), the State Court could proceed no further. However, the State court did proceed and held a trial without jury, after the defendant (petitioner herein) had been brought into the state court under a witness subpoena. As a result of said trial, the defendant/petitioner was adjudged guilty and sentenced.

(3) As a result of the above trial in the State court, which was held after removal to the United States District Court had been effected, the defendant/petitioner filed a complaint in the United States District Court against the four judges and others who were involved in the proceedings which led to the said trial. This complaint was Civil Action No. 71-2684-M.

(4) The petitioner claims to this Court that the judges against whom action was taken had acted in contravention of U. S. Code Title 28, Section 1446(e), and that the action against the said judges should have been heard by the United States Dis-

trict Court, since the petitioner did present sufficient evidence of the proceedings in the State court by reading a State court transcript excerpt to the Judge of the United States District Court

(5) On December 14, 1972, a hearing was held before Judge Freedman of the United States District Court for the District of Massachusetts relevant to the defendants' motions to dismiss the action in that court, C. A. No. 71-2684-F. At that hearing the petitioner asked Judge Freedman for leave to read into the court record an excerpt from the transcript of the proceedings before Judge Kalus in the Middlesex County Superior Court, in which proceeding the petitioner pointed out to the lower court judge that the case had been removed from the Superior Court to the United States District Court, and that the Federal Rules of Civil Procedure state that once the removal is effected, the State can proceed no further. Leave was given to read the transcript, and the petitioner read to Judge Freedman's United States District Court the excerpt as follows:

* * *

"THE COURT: Are you ready for a hearing?

MR. PACE: No, your Honor.

THE COURT: I beg your pardon?

MR. PACE: No your Honor. This case had been removed, your Honor.

THE COURT: Removed where?

MR. PACE: To the Federal Court.

THE COURT: I have no record of this case being removed to the Federal Court. Do you have some papers?

MR. PACE: Yes, I have.

THE COURT: Give them to the Clerk.

THE CLERK: What he has is what we have there, Judge.

THE COURT: Let's take what he has.

THE CLERK: What do you have, sir?

MR. PACE: This certified copy. (1)

THE COURT: Well, this is a certified copy of a petition you filed in the United States District Court for the District of Massachusetts, in which you ask a demand for a jury trial. The case has not been removed, and the mere fact you have filed a petition--

MR. PACE: Your Honor, the Federal Rules of Civil Procedure specify that when a petition

---

(1) See page A-6 for copy of certified petition for removal which had been filed with the clerk of the State court and which Judge Kalus had in front of him at the time of the above remarks.

for removal has been filed in the Federal Court and a copy has been given to the State Court, it shall effect a removal and the State can proceed no further.

* * *

THE COURT: Excuse me. Are you a lawyer?

MR. PACE: I'm not an attorney, but it's right here--

THE COURT: Excuse me. I'm not saying that-- Even without being a lawyer, you may be correct in the law. Do you want to be heard?

MR. WITKIN:[2] If I might give you some background, your Honor, if I may?

THE COURT: Let's stay with the question of whether under the Federal procedure that the filing of a petition and then notice to the State court of the filing of the petition, per se, stays the proceedings.

* * *

THE COURT: Was the matter heard before Judge Lurie, this argument about staying the proceedings?

MR. WITKIN: It was, your Honor.

MR. PACE: Your Honor--

THE COURT: Excuse me. Who represented the defendant then?

MR. WITKIN: How, as he has always been, to my knowledge, and that goes back to August of

---

(2) Roger Witkin, attorney representing adverse party in the State court

1969, the defendant appears pro se.

THE COURT: The Court rules that the proceedings will-- are not and will not be stayed.

MR. WITKIN: Thank you, your Honor.

* * *

(6) The preceding excerpt from the transcript shows beyond a reasonable doubt that the State court knew well that it was circumventing Federal Law and that it was denying the petitioner/defendant the remedies afforded him under Federal Law. Also, the transcript shows that the petitioner was before a State court which was full of prejudice and bias and, under such conditions, a fair trial as guaranteed under the Constitution would be impossible. Furthermore, the transcript shows that the State court knew well that the proceedings could advance no further and that the State was compelled to defer to constitutional, congressional and Federal Law; however, the State did proceed. The petitioner cites the following cases with reference to the voidibility and erroneousness of actions considered by a lower court after removal had been effected: Kern v Huidekoper, Ill. 1881, 103 U.S. 485, 26 L.Ed, 354; McCullough v Large, C.C.Pa.

1884, 20 F. 309; Ferris v Farnsworth Television & Radio Corp., D.C.N.Y. 1947, 8 F.R.D. 489.

(7) The petitioner sought to void the decision of the State court by bringing an action in the United States District Court and, when the District Court chose to dismiss the action, it left the petitioner to the mercy and whims of the State court, which could, and did, violate the petitioner's Constitutionally-guaranteed rights to a fair trial.

## CONCLUSION

This Honorable court should grant this petition for a writ of certiorari to review the errors of the Court of Appeals for the First Circuit in affirming the dismissal of the petitioner's complaint of violations of Federal Law and Civil Rights, doing so particularly in the exercise of this court's supervision over the conduct of officers of any State court in the United States.

Respectfully submitted,

May 25, 1973

ROBERT V. PACE
Petitioner
P. O. Box 172
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Appendix A

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 73-1001

ROBERT V. PACE
Plaintiff, Appellant

v

LEVIN H. CAMPBELL ET AL.,
Defendants, Appellees

---

ORDER OF COURT

Entered February 28, 1973

Upon consideration of appellees' motion for summary judgment,

It is ordered that the appeal herein be, and the same hereby is, dismissed under Rule 12 as frivolous.

The Court reserves action on appellees' motion for vexatious costs until a bill of costs is submitted.

By the Court:

DANA H. GALLUP, Clerk

By /s/ Francis P.Scigliano
Chief Deputy Clerk

## Appendix B

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ROBERT V. PACE

v

CIVIL ACTION
No. 71-2684-F

LEVIN H. CAMPBELL ET AL.

ORDER

December 19, 1972

FREEDMAN, D.J.

After due consideration by this court of oral arguments and written memoranda of law, and a study of the entire pleadings in this matter, it is ORDERED that the motion of the defendants, Levin H. Campbell, Andrew R. Linscott, Reuben L. Lurie and Karry Kalus, to dismiss be allowed.

With complete deference to the fact that the plaintiff is a layman and representing himself in this action, and that the subject complaint is an amended one, and granting the plaintiff every reasonable opportunity to have his day in court, I cannot, following our own Federal Rules of Civil Procedure, Rule 8(a), justify any claim which he has put forward under which he can recover.

It is an accepted rule that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Conley v Gibson, 355 U.S. 41, 45-46 (1957).

It became clear that if the plaintiff truly believes that any of the four instant defendants committed error in their capacities as judges of the Massachusetts Superior Court that his proper relief was by a bill of exceptions to the Massachusetts Supreme Judicial Court rather than by this action in the federal court.

For the foregoing reasons, it is ORDERED that the above-entitled action be, and is hereby dismissed.

/s/ Frank H. Freedman

District Judge

Appendix C

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ROBERT V. PACE

v

LEVIN H. CAMPBELL ET AL.

CIVIL ACTION
No. 71-2684-F

ORDER

December 19, 1972

FREEDMAN, D.J.

After due consideration by this court of oral arguments and written memoranda of law, and a study of the entire pleadings in this matter, it is ORDERED that the motion of the defendants, Robert S. Welsh, Priscilla P. Welsh and Roger Witkin, to dismiss be allowed.

With complete deference to the fact that the plaintiff is a layman and that the subject complaint is an amended one, and granting the plaintiff every reasonable opportunity to have his day in court, I cannot, following our own Federal Rules of Civil Procedure, Rule 8(a), justify any claim which he has put forward under which he can recover.

It is an accepted rule that a complaint should not be dismissed for failure to state a claim which would entitle him to relief. Conley v Gibson, 355 U.S. 41, 45-46 (1957).

Since the plaintiff's case falls in this category, it is ORDERED that the above-entitled action be, and is hereby dismissed.

/s/ Frank H. Freedman
District Judge

Appendix D

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ROBERT V. PACE

CIVIL ACTION

v

No. 71-2684-F

LEVIN H. CAMPBELL ET AL.

JUDGMENT OF DISMISSAL

December 19, 1972

FREEDMAN, D.J.

Pursuant to the Orders entered by this Court on December 19, 1972, it is hereby ORDERED:

Complaint is dismissed.

By the Court,

/s/ Susan A. Tebo
Deputy Clerk

/s/ Frank H. Freedman
UNITED STATES DISTRICT JUDGE

# Appendix E

IN CLERK'S OFFICE
Oct 13 1 18 PM '71
U.S. DISTRICT COURT
DISTRICT OF MASS.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Priscilla P. Welsh
Plaintiff

v

No. 71-2237-M

Robert V. Pace
Defendant

PETITION FOR REMOVAL

Demand for Jury Trial

Your petitioner, Robert V. Pace, comes before this honorable court and petitions for removal from Middlesex County Superior Court in equity within the Commonwealth of Massachusetts to United States District Court for the District of Massachusetts, pursuant to U. S. Code, Title 28, Section 1441, for the following reasons:

1. The United States District Court gained original jurisdiction over the subject matter, which is cohesively related to and part of cases Nos. 69-1219-M and 68-528 entitled "Pace vs. Edward King et als" and "In the Matter of Bedford Aviation", respectively, both of which are presently before this honorable court.

2. In addition, this case is removable for reason that the petitioner demands a trial by jury guaranteed under the laws and articles of the constitution of the United States - said trial by jury being denied by state statute as shown in the attached Petition for Attachment for Contempt.

I hereby attest and certify on OCT 15 '71, that the foregoing document is a full, true and correct copy of the original on file in my office, and in my legal custody.

RUSSELL A. [illegible]
CLERK, U.S. DISTRICT COURT
DISTRICT OF MASSACHUSETTS
By: [illegible] Deputy

3. Further, the United States District Court has original jurisdiction over violations of civil rights, pursuant to the Civil Rights Act of 1964, as amended in 1967.

4. Your petitioner is unable to enforce his rights, including that of trial by jury, which are guaranteed under the constitution of the United States.

5. In the above-referenced action, the original jurisdiction lies in the United States District Court and therefore is removable.

CASES CITED

(a) The right to remove exists, when the federal courts are given original concurrent, though not exclusive, jurisdiction of the subject of the action. Nichols v Chesapeake & Oh. Ry. Co., 1907, 105 S.W. 481, 32 Ky. Law Re. 270.

(b) To render an action removable to a federal court, it is necessary that it could have been originally brought in the federal

court. Metcalf v. Watertown, Wis. 1888, 9 S.Ct. 173, 128 U.S. 586, 32 L.Ed. 543. See also:

In re Winn, Iowa 1909, 29 S.Ct. 515, 215 U.S. 458, 53 L.Ed.873;

In re Dunn, Tex. 1909, 29 S.Ct. 299, 212 U.S. 374, 53 L.Ed. 558, 562;

Ex parte Wisner, Mo. 1905, 27 S.Ct. 150, 203 U.S. 449, 51 L.Ed. 264;

Cochran v Montgomery County, Ala. 1905, 26 S.Ct. 58, 199 U.S. 260, 50 L.Ed. 182, 4 Ann. Cas. 451;

Madisonville Traction Co. v St. Bernard Min.Co., Ky. 1905, 25 S.Ct. 251, 196 U.S. 239, 49 L.Ed. 462.

(c) Jurisdiction of the state court, in which an action is commenced, is essential to confer jurisdiction upon a federal court to which it is removed. Wabash Western R. Co. v Brow, Mich. 1896, 17 S.Ct. 126, 164 U.S. 271, 41 L.Ed. 431. See also: National Acc. Soc. v Spiro, Mich. 1896, 17 S.Ct. 996, 164 U.S. 281, 41 L.Ed. 435.

Robert V. Pace

October 15, 1971

## AFFIDAVIT OF SERVICE

I, Robert V. Pace, make oath that I have this day made service on the respondents of this Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit, by depositing in the United States Postal Service, with first class postage prepaid, four copies addressed to Charles Mark Furcolo, Esquire, c/o Massachusetts Attorney General, The State House, Boston, Massachusetts, and three copies addressed to Roger Witkin, Esquire, 73 Tremont Street, Boston, Massachusetts, 02108.

May 25, 1973

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